IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 295 of 1996.

Judgment reserved on: 17.8.2007

Date of decision: 21.9.2007.

Pritam Chand deceased through Satya Devi and Ors.

…….Appellants

Vs.

Krishan Kumar & Ors. …. Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellants : Mr. G.D. Verma, Sr. Advocate with Mr. B.C. Verma, Advocate.

For the Respondents : Mr. K.D. Sood, Advocate.

Kuldip Singh, Judge.

The appellants/plaintiffs are in appeal against judgment, decree dated 19.8.1996 passed by learned District Judge, Kangra at Dharamshala in Civil Appeal No.97 of 1992, vide which judgment, decree dated 31.8.1992 passed by learned Senior Sub Judge, Kangra at Dharamshala in Civil Suit No.363/86 was set aside and the suit was dismissed.

2. The facts in brief are that appellants filed a suit for declaration that they are in cultivating possession of the suit land as tenants at Will (Gair Morusi) on Galla Batai and the names of respondents/defendants in the column of cultivation are wrong, the

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

appellants be recorded as Gair Morusi tenants in the column of cultivation under respondents with permanent injunction restraining the respondents from interfering in the possession of the appellants on the suit land. In alternative decree for possession, in case the respondents succeed in taking forcible possession of the suit land from appellants during the pendency of the suit.

3. The further facts are that suit land comprised in khata No.236 min, Khatauni No.364, khasra Nos., 216, 234, 296 and 632, Kitas 4, measuring 0-73-38 hectares, situated in Mohal and Mauja Birta, Tehsil and District Kangra, vide jamabandi for the year 1983-84 has been shown to be owned and possessed by respondents. The appellants are in cultivating possession as Gair Morusi (tenant-at Will) on the suit land for the last 18 years on Galla Batai and they have been paying rent to the respondents. The respondents are influential persons and therefore, did not allow the entries of appellants to be incorporated in the revenue record and subsequent jambandies. The respondents are taking undue advantage of the wrong entries in their names in the revenue record in the column of cultivation. They are threatening to take forcible possession of the suit land from the appellants. On these allegations appellants filed the suit for declaration and permanent prohibitory injunction.

4. The suit was contested by respondents by filing written statement in which preliminary objections of waiver, limitation, jurisdiction, valuation have been taken. It has also been pleaded that the suit is barred on account of acts, conduct acquisance and silence of the appellants. On merits, it has been denied that appellants are in

cultivating possession as tenants under the respondents or their predecessors on the suit land. It has been pleaded that appellants are tenants under respondents on field No.212, measuring 0-24-40 hectares. The appellants have no concern in any capacity with the suit land. The appellants and their predecessor earlier filed an application before the Settlement Naib Tehsildar, Kangra regarding suit land in the year 1974. They admitted their possession as tenants on field No.212 measuring 6 kanals 2 marls while on the rest of the land they have no concern either as tenants or in any capacity. The application for correction of entries was thus rejected. On these grounds respondents submitted for dismissal of the suit.

5. The appellants filed replication in which they reiterated their stand which was taken in the plaint and denied the case set up by the respondents in the written statement.

6. The learned Senior Sub Judge, Kangra at Dharamshala decreed the suit on 31.8.1992, which was assailed by respondents in appeal and was allowed by learned District Judge on 19.8.1996 and the suit of the appellants was dismissed, hence this appeal.

7. The appeal has been heard on following substantial questions of law:-

1. *Whether the plaintiffs were earlier tenants with possession on the suit land and later on they are owners in possession of the suit land?*
2. *Whether the learned District Judge has misconstrued, misinterpreted the pleadings and evidence on record*

and the view taken by him in the impugned judgment, decree is not possible on the basis of material on record.

3. I have heard the learned counsel for the parties and gone through the record.

Substantial Questions of Law No.1 and 2

4. The substantial questions of law referred above are interconnected, therefore both are being considered collectively and accordingly disposed of. The learned counsel for the appellants has submitted that appellants were earlier tenants on the suit land and now they are owners in possession thereof. It has been submitted that learned District Judge has misconstrued, misinterprpeted the pleadings and evidence on record and has erred in dismissing the suit. The learned counsel for the respondents has supported the impugned judgment, decree.

5. In jamabandies for the year 1979-80 Ex.P-2, 1983-84 Ex.P-1, 1988-89, Ex.P-9, Mishal Haquiat Ex.P-3, the respondents/defendants are recorded owners in possession of the suit land. The respondents/defendants have been shown owners in possession of the suit land consistently in the jamabandies to which presumption of truth is attached. There is heavy burden on the appellants/plaintiffs to rebut this presumption.

6. The appellants in the plaint have pleaded that they are tenants at Will under the respondents for the last 18 years on Galla Batai (Rent). The appellants have not pleaded, on what terms and by whom they were inducted as tenants on the suit land. The perusal

of the plaint would show that at the time of filing of the suit respondents Anup Kumar and Sanjeev Kumar were minors. It has not been pleaded, who inducted the appellants as tenants under Anup Kumar and Sanjeev Kumar minors or how appellants became tenants of minors Anup Kumar and Sanjeev Kumar.

7. The suit was filed in August, 1986, therefore, as per allegations in the plaint the appellants were inducted tenants somewhere in the year 1968. PW-1 Puran Chand made a statement in the Court on 5.7.1991 and has stated that he is in possession of the suit land for the last 23-24 years. He has stated that he is cultivating the suit land along with his brothers. In examination-in-chief he has not uttered a word when appellants were inducted tenants on the suit land and by whom and on what terms.

8. PW-2 Baldev Kumar has stated that at the instance of Pritam etc. he has written receipts Ex.PW-2/A to PW-2/C of Galla Batai. He has not stated that these receipts were written at the instance of respondents. In cross-examination he has stated that he is a clerk of an advocate and appellant's case for correction of entries is being handled by that advocate. PW-3 Kanchan Dass has stated that receipts Ex.PW-2/B, PW-3/A bears his signatures as witness.

9. PW-4 Munshi Ram has stated that appellants are cultivating the suit land for the last 15/20 years, his statement was recorded on 30.10.1991. Therefore according to this witness appellants are in possession of suit land since 1971-1976 which is not the case of appellants. He has stated that no Galla was paid in his presence. The perusal of statements of PW-1 to PW-4 clearly

shows that the appellants-plaintiffs have failed to prove their tenancy under respondents on the suit land. On the contrary DW-1 Krishan Kumar has stated that the dispute is with respect to 19 kanals of land, in addition to this the respondents have 6 kanals land. The suit land is owned and possessed by respondents. The appellants or Sawan Mal had no connection with the suit land. The appellants used to cultivate 6 kanals land which is not the part of 19 kanals disputed land.

10. DW-2 T.R. Negi has stated that he was posted Naib Tehsildar (Settlement) from 1972 to 1976. He has proved application Ex.DW-2/A for correction of entries. He has deposed that he recorded the statement of Sawan Mal in correction of entries case, a copy of which is Ex.DW-2/B. He has also proved his order dated 4.4.1974, copy of which is Ex.DW-2/C. According to him Sawan Mal vide application Ex.DW-2/A applied for correction of entries pertaining to land Khata No.247, Kitas 5, measuring 19 kanals. Sawan Mal in his statement Ex.DW-2/B has stated that he is in possession of land measuring 6 kanals 2 marlas as tenant and rest of the land is in possession of owners. The land measuring 6 kanals 2 marlas is not part of suit land. On the basis of statement of Sawan Mal, Assistant Collector on 4.4.1974, passed order copy of which is Ex.DW-2/C and dismissed correction of entries application of Sawan Mal. It is thus clear that Sawan Mal predecessor-in-interest of the appellants admitted the possession of respondents on the suit land. DW-3 Sher Singh has stated that Krishan etc. respondents are in possession of disputed land measuring 19 kanals. The respondents have proved

their ownership and possession on the suit land. In jamabandi for the year 1966-67 Ex.D-13, Smt. Kalawati predecessor of respondents is recorded in self cultivating possession on the suit land. In jamabandi for the year 1966-67 Ex.D-14 Sawan Mal has been recorded in possession on 6 kanals 2 marals of land on payment of Galla Batai. The appellants have miserably failed to prove that earlier their predecessor and later on they were ever in possession of the suit land as tenant or now they are in possession of the suit land as owners. The appellants have not proved their possession on the suit land in any capacity. The learned District Judge has appreciated the material on record rightly. The appellants have failed to make out any case that learned District Judge has misconstrued, misinterpreted the pleadings and other material on record. No case for interference has been made out. The substantial questions of law No.1 and 2 are accordingly answered against the appellants.

11. The result of above discussion, the appeal is dismissed with costs.

(Kuldip Singh)
Judge.

September 21, 2007
(sks)